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(4) Determine whether the basic twelve-year period of eligibility is extended for a veteran with a serious employment handicap;

(5) Determine as expeditiously as possible, without extended evaluation, whether achievement of a vocational goal is currently reasonably feasible.

(6) Evaluate the ability of the veteran to live and function independently within the veteran's family and community;

(7) Determine if the veteran is eligible for employment services under § 21.47;

(8) Develop information necessary to plan an individual program for a veteran found eligible and entitled to services under Chapter 31; and

(9) Assist a veteran who is found ineligible for assistance under Chapter 31 to identify other resources and programs for which he or she may be eligible.

(Authority: 38 U.S.C. 523, 3106(a), (d), 3116)

(c) *Scope of initial evaluation.* The initial evaluation shall include consideration of:

(1) The handicapping effects of the veteran's service-connected disability on employability and independence in daily living;

(2) The veteran's residual physical and mental capabilities which contribute to employability and independence in daily living;

(3) The veteran's ability to function independently in family and community;

(4) Prior assessments of employability by a counseling psychologist;

(5) Assessments authorized to provide additional information necessary for initial evaluation; and

(6) The veteran's personal history including:

(i) Education and training;

(ii) Employment;

(iii) Nonservice-connected disability(ies), and

(iv) Family and community adjustment.

(Authority: 38 U.S.C. 3106(a))

(d) *Responsibility for initial evaluation.*

(1) All determinations regarding service requirements for basic entitlement and, the beginning and ending dates of

a veteran's basic twelve-year period of eligibility shall be made by appropriate staff of the Adjudication Division.

(2) All other determinations, including extension of the basic twelve-year period because of serious employment handicap, and entitlement to assistance under Chapter 31 shall be made by appropriate staff of the Vocational Rehabilitation and Employment Division.

(Authority: 38 U.S.C. 3102, 3103, 3115(a))

(e) *Cooperation of the veteran.* The cooperation of the veteran is essential to an initial evaluation. The purpose of the initial evaluation and the steps in the process shall be explained to the veteran and his or her cooperation requested. If the veteran does not cooperate in the initiation or completion of the initial evaluation the counseling psychologist shall make a reasonable effort through counseling to secure the veteran's cooperation. If the veteran's cooperation cannot be secured, the counseling psychologist shall suspend the initial evaluation until such time as the veteran cooperates. The veteran will be informed of any suspension of the initial evaluation, the reasons for this action, and the steps necessary to resume the evaluation.

(Authority: 38 U.S.C. 3111)

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 56 FR 15836, Apr. 18, 1991]

§ 21.51 Employment handicap.

(a) *Importance of decision.* The proper determination of employment handicap is a critical decision for rehabilitation planning and program accountability. To the extent possible, necessary information shall be developed in the course of initial evaluation and the significance of the information under paragraphs (d) and (e) of this section for determining employment handicap shown in each case.

(Authority: 38 U.S.C. 3101(1), 3102)

(b) *Definition.* The term *employment handicap* means an impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with

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the veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(l))

(c) *Components of employment handicap.* Components of employment handicap include:

(1) *Impairment.* This term means the restrictions on employability caused by:

- (i) The veteran's service and non-service-connected disabilities;
- (ii) Deficiencies in education and training;
- (iii) Negative attitudes toward the disabled; and
- (iv) Other pertinent factors.

(2) *Service-connected disability.* The veteran's service-connected disability need not be the sole or primary cause of the employment handicap but it must materially contribute to the impairment described in paragraph (c)(1) of this section. Therefore its effects must be identifiable, measurable, or observable.

(3) *Nonservice-connected disability.* This term includes all physical and mental disabilities which have not been found to be service-connected by the Department of Veterans Affairs, including alcoholism and drug abuse. The effects of alcoholism and drug abuse are to be considered in the same manner as other nonservice-connected disabilities in evaluating restrictions on employability. When the manifestations of alcoholism, drug abuse or other nonservice-connected disabilities raise questions as to the reasonable feasibility of a vocational goal for a veteran otherwise entitled to assistance under Chapter 31 such questions will be resolved under provisions of §21.53.

(4) *Consistency with abilities, aptitudes, and interests.* The following points should be considered to determine if the veteran's training and employment are consistent with his or her abilities, aptitudes and interests:

- (i) A finding that a veteran is employed in an occupation which is consistent with his or her abilities, aptitudes and interests may not be made if the occupation does not require reasonably developed skills, except under conditions described in paragraphs (e) (2) and (3), of this section;

(ii) The veteran's residual capacities, as well as limitations arising from the veteran's service and nonservice-connected disabilities are relevant;

(iii) Evidence of the consistency of interests with training and employment may be based on:

(A) The veteran's statements to a Department of Veterans Affairs counseling psychologist during initial evaluation or subsequent reevaluation;

(B) The veteran's history of participation in specific activities; or

(C) Information developed by the Department of Veterans Affairs through use of interest inventories.

(Authority: 38 U.S.C. 3102)

(d) *Determining extent of impairment.* The extent of the veterans impairment shall be assessed through consideration of factors described in paragraph (c)(1) of this section:

(e) *Material contribution of service-connected disability to the impairment.* A finding that the veteran's service-connected disability materially contributes to his or her impairment to employment will be made by assessing the following factors:

(1) *Preparation for employment.* The service-connected condition adversely affects the veteran's current ability to prepare for employment in one or more fields which would otherwise be consistent with the veteran's abilities, aptitudes, and interests. An adverse effect is demonstrated when the physical or psychological results of the service-connected condition:

- (i) Impair the veteran's ability to train;
- (ii) Prevent or impede access to training facilities; or
- (iii) Diminish the veteran's motivation and ability to mobilize his or her energies for education or training.

(2) *Obtaining employment.* The service-connected condition places the veteran at a competitive disadvantage with similarly circumstanced nondisabled persons in obtaining employment. A veteran without reasonably developed specific job skills shall be considered to be at a competitive disadvantage unless evidence of record shows a history of current, stable, continuing employment.

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(3) *Retaining employment.* The physical or psychological effects of a service-connected condition adversely affect the veteran's ability to maintain employment which requires reasonably developed skills. This criterion is not met if a veteran though lacking reasonably developed skills, has a history of continuing, stable employment.

(Authority: 38 U.S.C. 3101(1))

(f) *Determination of employment handicap.* The counseling psychologist may find the veteran has an employment handicap.

(1) An employment handicap which entitles the veteran to assistance under this program exists when all of the following conditions are met:

(i) The veteran has an impairment of employability; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons not within their control;

(ii) The veteran's service-connected disability materially contributes to the impairment of employability;

(iii) The veteran has not overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests.

(2) An employment handicap does not exist when *any* of the following conditions is present:

(i) The veteran's employability is not impaired; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons within their control;

(ii) The veteran's employability is impaired, but his or her service-connected disability does not materially contribute to the impairment of employability.

(iii) The veteran has overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests, and is successfully maintaining such employment.

(Authority: 38 U.S.C. 3102)

(g) *Eligibility for employment assistance.* If a veteran is not found to have

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an employment handicap a separate determination of his or her eligibility for employment assistance will be made under provisions of § 21.47.

(Authority: 38 U.S.C. 3117)

(h) *Responsibility for determinations.* The determination of an employment handicap and eligibility for employment assistance may only be made by a counseling psychologist in the Vocational Rehabilitation and Employment Division.

(Authority: 38 U.S.C. 3106(a))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 54 FR 21216, May 17, 1989]

§ 21.52 Serious employment handicap.

(a) *Requirement of determination of serious employment handicap.* A separate determination whether a serious employment handicap exists shall be made in each case in which an employment handicap is found.

(Authority: 38 U.S.C. 3106(a))

(b) *Definition.* The term *serious employment handicap* means a significant impairment of a veteran's ability to prepare for, obtain or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(7))

(c) *Serious employment handicap exists.* A veteran who has been found to have an employment handicap shall also be held to have serious employment handicap if he or she has:

(1) A neuropsychiatric service-connected disability rated at thirty percent or more disabling; or

(2) Any other service-connected disability rated at fifty percent or more disabling.

(d) *Serious employment handicap may exist.* A veteran with a nonneuropsychiatric service-connected disability may be found to have a serious employment handicap even though the disability is rated at thirty or forty percent disabling, when either of the following conditions exists:

(1) The veteran has a prior history of poor adjustment in training and employment, and special efforts will be